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I. THIS COURT MUST ABOLISH THE DOCTRINE OF OFFICIAL IMMUNITY WHICH RELATOR HILL CLAIMS AS A CLOAK OF IMMUNITY FROM PLAINTIFF'S SUIT, BECAUSE IT WORKS INJUSTICE, IS APPLIED WITHOUT REGARD TO RIGHT OR WRONG, DENIES BASIC SUBSTANTIVE RIGHTS OF THE INDIVIDUAL, IS NOT FAIR NOW AND HAS NEVER BEEN FAIR NOR WILL IT EVER BE FAIR, IT RUNS AGAINST THE BASIC PREMISE UPON WHICH JUSTICE IS FOUNDED THAT THERE BE A RIGHT FOR EVERY WRONG, AND WHATEVER REASON FOR THE DOCTRINE IN ITS INCEPTION DOES NOT EXIST TODAY, OR WEIGHED AGAINST THE DISRESPECT IT ENGENDERS FOR OUR LEGAL SYSTEM, DOES NOT JUSTIFY ITS COST.

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II. IF THIS COURT DOES NOT ABOLISH OFFICIAL IMMUNITY, IT OUGHT TO MODIFY THE IMMUNITY TO THE EXTENT OF

MAKING IT A TEMPORARY IMMUNITY COMMENSURATE WITH THE TENURE OF THE PUBLIC OFFICE HELD, DURING WHICH TIME THE STATUTE OF LIMITATIONS MIGHT BE TOLLED, ALLOWING A VICTIM TO BRING THE ACTION AT SUCH TIME AS THE PUBLIC OFFICER WAS NO LONGER SO EMPLOYED.

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III. IF OFFICIAL IMMUNITY IS ABOLISHED OR MODIFIED BY THIS COURT, NO GOOD CAUSE EXISTS WHY THE GENERAL PRINCIPAL OF VICARIOUS LIABILITY THROUGH RESPONDEAT SUPERIOR OUGHT NOT APPLY, AS BETWEEN A SHERIFF AND HIS DEPUTY.

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IV. RESPONDENT DID NOT ERR IN OVERRULING RELATOR RICHARD HILL'S MOTION FOR SUMMARY JUDGMENT, BECAUSE THERE IS SUBSTANTIAL CREDIBLE EVIDENCE FROM WHICH A JURY MIGHT REASONABLY FIND RELATOR, BY HIS ACTIONS SUBSEQUENT TO THE SHOOTING, RATIFIED THE ACTIONS OF DAVID LOE.

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STATEMENT OF FACTS

Respondent provides a separate statement of facts to set forth those facts that are material to the legal questions presented by this appeal.

On the evening of his death Charles "Chuck" Kuyper was driven to his mother Mary Kuyper's home, where Chuck was living, by his cousin, Kimberly Kessinger, in Chuck's truck.¹ Kimberlee testified they left a club in Branson, the "Down Under", about midnight.²

Chuck was "happy-go-lucky" on the way home. The trip home took between 20 and 30 minutes.³ After they arrived at Chuck's mother's, Chuck grabbed the keys from the ignition in a joking manner, and both were laughing.⁴ Kimberlee told Chuck that she wouldn't get out of the car until he gave her the

¹ Respondent's Ex. 23, deposition of Kimberlee Kessinger-Isaacs, page 8, line 9 to Page 20, line 24.

² Kimberlee Kessinger-Isaacs based her estimated time of leaving only on her belief the Down Under closed at midnight.

³ Id.

⁴ Id., deposition of Kimberlee Kessinger-Isaacs, Page 25, line 17-24.

keys or went in the house.⁵ The two of them sat together talking in the truck for about two hours.⁶

During that two hours, they talked about several things, including breakups, Chuck's father's death, and religion⁷ including Chuck's having been saved a few months prior to his father's death.⁸ Discussion of religion dominated their conversation.⁹

About ten minutes before 2:00 a.m., (the morning of June 4, 2001), Chuck's brother Bo came out from his home¹⁰ which was located very near Mary's house. Kimberlee did not know why Bo came out, she said she and Chuck were engaged in quiet discussion, and were not making a lot of noise.¹¹

⁵ Id., Respondent's Ex. 23, deposition of Kimberlee Kessinger-Isaacs.

⁶ Id., at Page 28, lines 3-5.

⁷ Id., at Page 29, lines 3-18.

⁸ Id., at Page 30, lines 2-8.

⁹ Id., Page 30, line 25, to Page 31, line 6.

¹⁰ Id., Page 35, lines 2-4.

¹¹ Id., Page 35, lines 6-20.

When Bo came out he seemed surprised to see Kimberlee, he did not know she had brought Chuck home.¹² Bo suggested he would take Kimberlee home to her father's, a trip of one-half mile down the lane, through the woods; and would bring Chuck back; that was okay with Chuck, and Chuck gave Bo the keys to his truck.¹³ Kimberlee was dropped at her parents' home, about 2:00 a.m.¹⁴

En route back from dropping Kimberlee at her parents' home, the two brothers argued, with Bo challenging Chuck over his drinking alcohol.¹⁵ The conversation began decently, but then Bo said ""Why in the f***k do you have to continue to go and drink", to which Chuck responded "Who the f***k do you think you are?"¹⁶ It grew heated to the point the two were ready to fight.¹⁷

¹² Respondent's Ex. 23, deposition of Kimberlee Kessinger-Isaacs, Page 35, lines 1-4.

¹³ Id., Page 36, lines 6-25.

¹⁴ Id., at page 38, lines 8-10; also, Relator's Exhibit F, deposition of Richard Kuyper, Page 60, lines 6-14.

¹⁵ Relator's Exhibit F, deposition of Richard Kuyper, page 58, line 20, through Page 59, line 24.

¹⁶ Id., at Page 61, lines 6-10.

¹⁷ Id., page 61, lines 16-18.

At that point, Bo told Chuck, "If you want a piece of me, get out", to which Chuck acceded, but after stopping and letting Chuck out, Bo drove off "to save further confrontation", returning to his mother's house to give her Chuck's keys and "maybe to tell on Chuck."¹⁸ The point where Chuck was dropped was about one quarter mile from his mother's house, halfway between her home and that of the Kessingers.¹⁹

Bo recalls his mother being asleep when he first arrived, and said he woke her and told her that Chuck had been drinking and was mad because Bo had taken his keys from him.²⁰ Chuck apparently ran home because he arrived very quickly, finding Bo talking with their mother in the kitchen.²¹ Chuck entered the home angry at Bo, and an argument or fight ensued between the brothers.²² Bo states neither he nor his mother was scared, but his mother was mad at her sons for being in the house arguing at that time of morning.²³

¹⁸ Id., page 61, line 16 to page 62, line 14; page 63, lines 9-17.

¹⁹ Id. Page 63, lines 2-8.

²⁰ Id. Page 64, lines 5-13.

²¹ Id. Page 64, lines 14-25.

²² Exhibit F, deposition of Richard Kuyper, Page 66, lines 4-8.

²³ Id., Page 67, line 23, to Page 68, line 6.

Chuck was angry and grabbing things from the drawers of the kitchen cabinet, including a butcher knife and a meat tenderizer with which he banged on the cabinets.²⁴ [Although referenced by the witness as a "cleaver", the description given by the witness is that of a meat tenderizer²⁵, and Mary Kuyper testified she did not own a meat cleaver²⁶]. Chuck never attempted to cut anyone with either the knife or meat "cleaver".²⁷ Bo did not think that Chuck had endangered his mother.²⁸

Bo grabbed Chuck and wrestled him to the floor quickly.²⁹ A vase fell from the refrigerator and broke and Bo was cut by the broken glass on the floor³⁰. Bo was much larger than Chuck, and placed him in a headlock and held him, trying to get him to calm; the boys' mother asked Bo to leave and he

²⁴ Id., Page 71, line 13, to Page 72, line 9.

²⁵ Id., Page 71, lines 19-22.

²⁶ Relator's Exhibit L, deposition of Mary Kuyper, Page 31, lines 19-25.

²⁷ Relator's Ex. F, deposition of Richard Kuyper, Page 72, lines 21-25.

²⁸ Id., Page 73, lines 1-4.

²⁹ Id. Page 74, lines 7-9.

³⁰ Id., Page 68, lines 7-23.

got up and left.³¹ Chuck did not attempt to pursue Bo after Bo let him up and walked away.³²

When Bo left his mother's house he and his wife met Mary Miller at their (the Millers') front door.³³ He told her, "Mary, we should probably call the cops . . . Chuck's been drinking . . he wants to leave . . . blah, blah, blah".³⁴ Mary, who was just waking up, basically just went by what Bo said, and she or her husband dialed 911.³⁵ Bo's concern at the time was for others on the highway should Chuck attempt to leave and drive when he had been drinking.³⁶ Bo was bleeding, and had told Mary that Chuck had earlier had a knife and was beating on the cabinets, and Mary first incorrectly assumed Bo had been cut by the knife and related that to the dispatcher.³⁷

At about this same time Mary Kuyper stepped outside the home, and Bo yelled to her "the cops are on their way", to which she said "We don't need the

³¹ Id., Page 69, lines 8-21; page 74, lines 20, to Page 75, line 6.

³² Id., Page 75, lines 5-13.

³³ Id., page 76, line 19, to page 77, line 7; page 77, line 18 to page 78, line 6.

³⁴ Id., page 77, lines 4-13.

³⁵ Id, page 77, lines 14-21; page 78, lines 7-16.

³⁶ Id., page 84, line 19, to page 85, line 18.

³⁷ Respondent's Ex. 18, deposition of Mary Miller.

cops. He's okay. You don't need to call the police. Chuck's fine. We're okay", or something to like effect, and returned into the home.³⁸

The 911 operator spoke with Bo, and Bo assured her he had not been cut by a knife but by broken glass from when he and his brother wrestled to the floor, and that the original callers, Albert Miller and Mary Miller, had not been in the home when the incident took place and did not know what took place.³⁹

The 911 emergency services operator downgraded the dispatch from Priority One to Priority Two at 2:10:39⁴⁰, as Deputy David Loe was turning onto Highway 160.⁴¹ David Loe understood the downgrade to mean that the parties who had been in dispute were separated at that time and to him the Code Four message, meant "everything's okay at that time".⁴²

Deputy Hayes said he was informed before arriving, that the call was downgraded, and everything was "Code Four", the brothers were separated.⁴³

³⁸ Respondent's Ex. F, deposition of Richard Kuyper, page 87, line 6, to Page 88, line 25.

³⁹ Relator's Exhibit E, 911 tape.

⁴⁰ Respondent's Ex. 10, dispatch log, 911 Emergency Services.

⁴¹ Relator's Ex. C., deposition of David Loe, Page 74, lines 4-16.

⁴² Id., at Page 75, line 2 to Page 77, line 23.

⁴³ Relator's Ex. G, deposition of Richard Hayes, Page 24, lines 2-20.

Arriving at the scene first, Deputy Loe found no one who appeared to be suffering any serious physical injury⁴⁴ and there was no disturbance going on.⁴⁵

Inside the home, after Mary Kuyper had sent Bo home, she had followed Chuck downstairs to his room. "[H]e was kind of crying and he said 'Mom, I'm sorry' . . . 'maybe some day people won't have to worry with me'.⁴⁶ Mary Kuyper understood him to mean that he wouldn't be doing it anymore, or would move somewhere else, or that he and Richard wouldn't argue, or whatever.⁴⁷ Mary called Richard Youngblood (Chuck's employer, cousin, and friend), and informed him that Chuck wanted to talk with him, that he needed a friend to talk to, and felt Richard was the only one he could talk to, and Richard said he would come.⁴⁸

The emergency services 911 radio log evidences the first dispatch of an officer occurred at 02:02:12. It further reveals the arrival time of each of the officers vehicles as they arrived at Mary Kuyper's home.

⁴⁴ Relator's Ex. C, deposition of David Loe, at Page 83, Lines 19-22.

⁴⁵ Id., at Page 84, lines 3-7.

⁴⁶ Relator's Exhibit L, Mary Kuyper deposition, page 33, lines 1-16.

⁴⁷ Id., at lines 17-23.

⁴⁸ Respondent's Ex. 20, Richard Youngblood's deposition, Page 19, line 24, to Page 20, line 22.

<u>Officer</u>	<u>Unit Designation</u>	<u>Arrival Time</u>
Deputy Sheriff David Loe	#125	2:14:55
Deputy Sheriff Richard Hayes	#145	2:20:56
Corporal L.W. Crooks	#MSHP166	2:21:04
Deputy Sheriff John Elmore	#149	2:22:58
and Deputy Sheriff Shawn Cox	#127	2:22:58

Before things went any further Bo Kuyper repeatedly requested officers to call inside the house, and offered a portable telephone for the purpose: "I said, Here. Call my mother. She will tell you if she needs you or not."⁴⁹ He was ignored.⁵⁰ Mary Miller also asked Deputy Hayes to call into the house and speak with her mother, concerning whether any officers were needed, and offered a phone.⁵¹

⁴⁹ Relator's Ex. F, Richard Kuyper deposition, page 118, line 22, to page 120, line 2.

⁵⁰ Relator's Ex. F, Richard Kuyper deposition, Page 119, lines 10-23. Also, Relator's Ex. D, deposition of Albert Miller, Page 73, line 21, to Page 74, line 21; Respondent's Ex. 17, deposition of Sherrie Kuyper at Page 24, line 10-23.

⁵¹ Relator's Ex. G, deposition of Richard Hayes, Page 47, line 19, to Page 48, line 3.

Mary Kuyper left Chuck in the basement to go get a cigarette for each of them.⁵² She opened the door at the landing to see if Richard Youngblood had arrived and was surprised to see law enforcement officers coming toward her house.⁵³ She exited the home, closing the door behind her, met Officer Hayes on the bridge in front of her home, and said "I don't want you all here"⁵⁴, and "Everything's okay"⁵⁵, a conversation overheard by Deputy Loe, standing on the grass near the bridge.

Mary Kuyper told the Officers to leave⁵⁶, she asked them not to enter her home⁵⁷, she told them that everything was okay within the house⁵⁸ and (deputy Loe said) her son had been intoxicated but had calmed down.⁵⁹ The

⁵² Relator's Ex. L, Mary Kuyper deposition, Page 16, line 8, to Page 17, line 3.

⁵³ Id., at Page 17, lines 8-19.

⁵⁴ Id., at page 41, lines 19-21.

⁵⁵ Id.

⁵⁶ Relator's Ex. C, deposition of David Loe, Page 89, line 20, to Page 90, line 1; Relator's Ex. G, deposition of Richard Hayes, Page 39, line 20, to Page 24.

⁵⁷ Relator's Ex. C, deposition of David Loe, at Page 90, lines 2-3.

⁵⁸ Id., at Page 90, lines 4-6; Relator's Ex. G, deposition of Richard Hayes at Page 39, lines 20-22.

⁵⁹ Relator's Ex. C, David Loe's deposition, Page 90, line 7-10.

Deputies ignored her request they leave and her protestations that everything was okay, and pushed past her toward the front door.⁶⁰

Mary placed her hand gently on Officer Hayes' shoulder, again assured him she did not need officers there, that everything was okay; to which he responded: "If you touch me again I will handcuff and arrest you."⁶¹ The two officers shoved past Mary Kuyper and continued toward the house.⁶²

⁶⁰ Respondent's Ex. 17, deposition of Sherrie Kuyper, Page 51, line 23, to Page 52, line 8.

⁶¹ Relator's Ex. L, Mary Kuyper deposition, Page 41, at lines 19 to page 42 line 9. Also: Respondent's Ex. 21, deposition of Hazel Rice, Page 16, line 19, to Page 17, line 18. Officer Hayes' own testimony was much similar: "I told her we have to go and make sure Charles is all right. We have to make sure everything is calmed down. And at that time she placed her hand on my chest and told us to leave. She basically refused for me to pass. And I told her, I was like, Ma'am, do not put your hand on my chest. If you try to stop me, I have no other choice but to arrest you. At that time she removed her hand. She still protested, but I was able to move around her with no problem . . . I started moving toward the house." Relator's Ex. G, deposition of Richard Hayes, Page 40, lines 1-15. Deputy Cox was moving to the rear of the house, but also heard her say "something to the effect of, Don't come in the house, go

Deputies Elmore and Cox started toward the rear of the house. Hayes and Loe approached the front door and Mary followed. Deputy David Loe first asked her, "Do you have a key to the door?" and Mary said "No." He then immediately kicked the door, after which Mary told them not to kick in her door, "[M]y mother will let you in" . . . but "he just kicked it on down."⁶³ Deputy Hayes confirmed Mary Kuyper offered that her mother (Hazel Rice) would open the door, before Officer Loe kicked it in.⁶⁴

Deputy Loe testified he made the decision to enter the home,⁶⁵ and he kicked in the door.⁶⁶ He did so, he said, to make contact with Chuck Kuyper.

away". He added: "I also heard Deputy Hayes state something to the effect of, Don't touch me, or something to that effect . . . But I was going around the house. I didn't pay much attention to what was said." [Relator's Ex. I, deposition of Shawn Cox, Page 15, line 18, to Page 16, line 5].

⁶² Relator's Ex. D, Albert Miller Deposition, Page 54, line 9-13.

⁶³ Relator's Ex. L, Mary Kuyper Deposition, Page 43, line 17, to Page 44, line 13.

⁶⁴ Relator's Ex. G, Richard Hayes' Deposition, Page 41, lines 10-21.

⁶⁵ Relator's Ex. C, David Loe's Deposition, Page 104, lines 15-20.

⁶⁶ Id., page 110, lines 7-16.

He had no warrant of any kind.⁶⁷ Deputies Shawn Cox and John Elmore had already been sent to the rear of the home.⁶⁸ Corporal Crooks was standing on the small bridge in front of the home, a distance of about 20' from the door.⁶⁹ Deputy Loe testified at deposition he didn't know "if [he] had enough information or not to get a warrant."⁷⁰

Loe claimed that before kicking the door he had shouted "Sheriff's Department!" loudly enough that anyone inside should have heard it, one from outside, once from inside the home.⁷¹ Deputy Sheriff Hayes said he heard it, and that Loe had shouted loudly enough that anyone of ordinary hearing where ever they might have been in the home, would have heard him.⁷²

Deputy Elmore also claimed he heard the shout "Sheriff" from the northeast (rear) corner of the Kuyper residence, simultaneously, or nearly so

⁶⁷ Id., page 110, line 25, to Page 111, line 4.

⁶⁸ Id., page 111, lines 10-17.

⁶⁹ Id., page 111, line 18, to Page 112, line 4.

⁷⁰ Id., Page 113, lines 10-11.

⁷¹ Relator's Ex. C, David Loe's Deposition, Page 117, line 21, to Page 119, line 8.

⁷² Relator's Ex. G, Deposition of Richard Hayes, Page 42, line 18, to Page 43, line 15; page 52, line 19 to Page 52, line 4.

with the sound of the door breaking.⁷³ Deputy Cox's typewritten statement describing the events, executed June 7, 2001 (3 days after the shooting) described how he had gone to the rear of the home, walked up to the second sliding glass door (at northwest corner of the house), and from that position: "I saw a person with a flashlight shining come down the stairs, and I realized that person was a deputy . . . [A]t about the same time I realized the person was a deputy, I heard from inside the house someone yell out 'Sheriff'". I can recall only hearing this one time."⁷⁴ [Emphasis added].

At deposition he also testified he heard the shout "Sheriff" and looked inside (through a sliding door at rear lower level of the home) and saw Deputy Loe coming down the stairway.⁷⁵

Q. And what did you do when you got to the back of the house?

A. I wasn't sure if -- the person come out the back or not, so I went farther out into the

⁷³ Relator's Ex. H, Deposition of John Elmore, Page 37, lines 1-10; page 39, line 8 to line 14.

⁷⁴ Respondent's Exhibit 9, Typewritten Statement of Shawn Cox, dated & signed 06/07/01, bottom of page 1, top of page 2.

⁷⁵ Relator's Ex. I, Deposition of Shawn Cox, Page 16, line 8, to Page 17, line 5.

yard. I was paying attention to the -- the rear deck of the house and, also, the tree line and that area back there because I wasn't sure if anybody had come out.

Q. And where was Officer Elmore at?

A. He -- he stayed up closer to the house, more near the back -- back of the house.

Q. Did either of you at that time try to open any of the doors to the home?

A. No, sir.

Q. Did you hear anything-- and what was the next thing that you did hear or see?

A. Let's see. I -- I come around the house, checked the backyard. I could still hear people around front talking, but I don't know what was said. I walked up closer to the house. I heard -- I heard the word "Sheriff." I looked inside, saw Deputy Loe. At the time, I did not know it was Deputy Loe -- but coming down the stairway and I saw him."

Shawn Cox further said that the word "Sheriff" was said loudly. That it "had to be loud that I heard it around the back of the house clearly".⁷⁶ Corporal Crooks of the Missouri State Highway Patrol did not hear the announcement shouted, from his position at front of the home⁷⁷, a distance of 20 feet away:⁷⁸

"At the same time, Deputy Hayes attempted to kick the door open. When his first kick didn't succeed, he backed up to do so again. As he did so, the white-haired lady (later identified as Mary Kuyper's mother) moved away from the window and disappeared from view. At the same time, Mary Kuyper said, "You don't have to do that, Granny will unlock the door." At the same time, Deputy Hayes delivered a successful kick and the door came open. Though there may have been an announcement by a deputy, I did not hear it." [Emphasis added].⁷⁹

⁷⁶ Relator's Ex. I, Deposition of Shawn Cox, Page 19, lines 15-21.

⁷⁷ Respondent's Ex. 4, MSHP Corporal Crooks' Report dated June 5, 2001, paragraph 13.

⁷⁸ This distance was from Deputy Loe's estimate, Relator's Ex. C, Deposition of David Loe, page 111, line 18, to Page 112, line 4.

⁷⁹ Id.

Mary Kuyper, standing a few scant feet away, said no announcement was given before the door was broken.⁸⁰ Bo Kuyper in the front yard a short distance away said no officer shouted "Sheriff", nor "Sheriff's Department!" Albert Miller,⁸¹ standing within 8 feet when the door was broken said no such thing was shouted. Mary Miller, 50 feet away and approaching, said nothing of the kind was shouted or said, that the officers just pushed her mother aside, went to the door and kicked it in.⁸²

Hazel Rice, who had been standing watching from the upper floor window, from which vantage point she was able to hear her daughter asking the officers to leave, said the Officers said nothing to identify themselves or announce their presence.⁸³ Sherry Kuyper heard no such shout from her position in the front yard. Richard Youngblood, standing 50-60' away when the door was kicked open, testified none of the officers announced who they were

⁸⁰ Relator's Ex. L, Deposition of Mary Kuyper, Page 104, lines 13-17.

⁸¹ Relator's Ex. D, Albert Miller's Deposition, Page 58, line 2, to Page 59, line 21. [Miller was within 8 feet when the door was broken].

⁸² Respondent's Ex. 18, Mary Miller's Deposition, Page 59, line 12, to Page 62, line 16.

⁸³ Respondent's Ex. 21, Hazel Rice's Deposition, Page 17, lines 9-18

or that they were coming in, before breaking the door.⁸⁴ Bill Youngblood had arrived before the door was broken, and he heard no announcement before he saw the door forced.⁸⁵

At deposition, Mary Kuyper said it was "seconds"⁸⁶ from the breaking of the door until the fatal shot, that it was "just very fast"⁸⁷; and she gave this description:

"He didn't say anything when he kicked the door. He didn't say, you know, "I'm from Stone County sheriff's department" or "I'm Deputy Loe" or I'm anybody else. He kicked it, and he went right on down the stairs and fired his gun."⁸⁸

⁸⁴ Respondent's Ex. 20, Richard Youngblood Deposition, Page 27, line 11, to Page 28, line 4.

⁸⁵ Respondent's Ex. 19, Bill Youngblood's Deposition, Page 29, lines 10-20.

⁸⁶ Relator's Ex. L, Mary Kuyper's Deposition, Page 103, line 18, to Page 104, line 1.

⁸⁷ Id., Page 104, lines 2-5.

⁸⁸ Id., Page 104, lines 13-17.

Deputy Loe testified he loudly shouted twice prior to shooting, "drop the gun!"⁸⁹, and maybe yet a third time, after he fired.⁹⁰ But Hazel Rice, only a few stair steps away from David Loe, said no one shouted "drop the gun". Her hearing was fine, good enough to have heard her daughter, talking outside the home before the door was forced, asking the officers not to kick in the door:

"I heard her [Mary] say, 'Don't kick my door. My mother will let you in.' And I left the window, started down the stairsteps. I got about three steps to the bottom when they kicked the door in and run down the stairs, never announced who they were or what their business was. I couldn't understand what was going on, and they hit the bottom stairs or right at the bottom stairs because they were going in a hurry and the gun, I heard it go off."⁹¹

Mary Kuyper was standing by the front door when the door was broken, and saw David Loe rush down the stairs and fire. She testified no warning was given before the fatal shot was fired.⁹² She was standing close enough to see

⁸⁹ Relator's Ex. C, Deputy Loe's deposition, Page 126, line 16 to Page 127, line 9.

⁹⁰ Id.

⁹¹ Respondent's Ex. 21, deposition of Hazel Rice, Page 17, lines 9-18.

⁹² Relator's Ex. L, Mary Kuyper's deposition, Page 39, lines 12-16.

Deputy Loe raise his weapon to fire.⁹³ She testified he said nothing, yelled nothing, from the time he kicked the door until the fatal shot was fired.⁹⁴

The entry from the front door was to a landing from which stairs departed leading both up and down.⁹⁵ Upon forcing the door, Deputy Loe went immediately downstairs with his flashlight in one hand and his gun out in the other.⁹⁶ The light in the hallway downstairs was out.⁹⁷ He entered the dark hallway "triggering" his flashlight on and off.⁹⁸

Deputy Hayes testified the time elapsed between breaking the door and firing the fatal shot might have been 10 seconds⁹⁹, that it was about 10-12

⁹³ Relator's Ex. L, Mary Kuyper's deposition, page 84, lines 20-22; page 79, lines 6-24.

⁹⁴ Id., Page 103, line 18, to Page 104, line 17.

⁹⁵ Exhibit/Tab 2, Volume 1, Exhibits of Respondent (Kuyper Floor Plan).

⁹⁶ Relator's Ex. C, David Loe's deposition, Page 122, lines 7-12; Relator's Ex. D, Albert Miller's Deposition, Page 62, lines 20-24.

⁹⁷ Relator's Ex. C, Id., Page 122, lines 2-5.

⁹⁸ Id., Page 125, lines 4-21.

⁹⁹ Relator's Ex. G, Richard Hayes' Deposition, Page 55, line 24, to Page 56, line 14.

seconds.¹⁰⁰ At his deposition, Deputy Loe claimed it happened so quickly he had "no time to aim . . . all I had time was to raise my arm and fire."¹⁰¹ [Deputy Elmore, asked about whether Loe aimed before firing, said, "Well, he had the -- the gun fully extended, his arm, and had the gun up to where you would try to get a sight. I would presume that he was aiming . . . he appeared to be aiming".¹⁰²]

Officer Elmore said that he heard Loe say drop the gun twice before stepping down onto the basement floor, and then Loe again, almost simultaneously, "Drop the gun."¹⁰³

The following soliloquy occurred at David Loe's deposition:

Q. How long was it from the time you forced the door till the shot was fired, do you believe?

A. Oh, probably less than 20 seconds.

Q. If we can wait just a minute to start 20 seconds running off. Sometimes its hard to judge these

¹⁰⁰ Relator's Ex. H, John Elmore's Deposition, Page 42, line 23 to Page 43, line 2.

¹⁰¹ Relator's Ex. C, David Loe's Deposition, at Page 128, lines 11-13.

¹⁰² Relator's Ex. H, John Elmore's Deposition, Page 43, lines 3-23.

¹⁰³ Id.

things, but I'll time here with my watch and I'll tell you when. Say it starts right now. That's -- Did that --- Did it take that long?

A. It probably took less time than that. I do not know the exact time. Everything seemed like it slowed down at the time of the shooting.

Q. From the moment you forced the door, you went directly downstairs; is that right?

A. That's correct.

Q. And as you first looked left, you looked at officers there, you knew -- you got --

A. It was pretty much --

Q. -- you were sure --

A. --- straight ahead and kind of --

Q. Okay. Kind of straight and to -- a little bit to your left?

A. Yes.

Q. So those officers saw that room was secure. Then did you immediately look right?

A. Yes.

Q. And did you immediately see Chuck Kuy --
Charles Kuyper?

A. Yes.

Q. And you fired in the time it took you to say,
Drop the gun, drop the gun?

A. That's when he was up on aim at me.

Q. And, actually, one of the times you said, Drop
the gun, may have been after the first shot was fired
yu - -

A. I said it twice.

Q. Or after the shot was fired.

Q. Yeah. I said --

Q. -- first shot.

A. I said it twice before I fired and I do believe I
said it once after that. I didn't think I hit him. It
looked like he just knelt down with the gun still on
his lap.

Q. After the shot had been fired, what did you do
next?

A. I stepped into the hallway. Hayes came down
behind me. I --

Q. Was he behind you in the stairwell at the time the shot was fired, do you believe?

A. He was-- I don't-- I don't know if he was on the stairwell or up on the landing.

Q. Was he the next officer behind you?

A. Yes, he was.

Q. You-- And he came in behind you?

A. Yes.

Q. What happened then?

A. I watched the suspect for a couple of seconds just to see if he moved. About that time I noticed he had been shot. I slowly approached. I reached down and checked his pulse.

Q. And where was Deputy Hayes when you were doing this?

A. He came in behind me.

Q. And did he go in through the rec room, to the right?

A. I- When I first went up, he -- Right after the shot, he -- I do believe that's when he got on the

radio and was calling for an ambulance and for the --
shots -- shots were fired.

Q. And you said he was the next one behind you
and came down behind you, I think you--

A. Yes.

Q. -- said earlier.

A. It was a matter of probably just --

Q. Do you recall him going in the rec room door on
the -- at the west-- would be the west rec room door,
going in that one and coming out the east rec room--

A. Yes.

Q. --door? Do you remember --

A. Yes.

Q. --that happening? And was that after --
immediately after the shooting?

A. Yes.

Q. And did he kick the gun into the bedroom?

A. Yes, he did."¹⁰⁴

¹⁰⁴ Relator's Ex. C, David Loe's Deposition, Page 129, line 10, to Page 132,
line 23 [Emphasis added]. Elsewhere in the same deposition, Loe testified that

Officer Richard Hayes at his own deposition gave this account of the timing and sequence of the fatal shooting, and the "kicking of the gun":

he had descended the stairs and was on the floor level of the downstairs basement before first seeing Charles Kuyper [Page 122, lines 7-17]. He also testified that he had seen both the officers behind the house [Elmore & Cox] at the sliding glass door at the northwest corner of the house, illuminating themselves with flashlights, before looking down the hallway and seeing Kuyper crossing from his bedroom to the pool room. David Loe's Deposition, page 120, line 20 to Page 123, line 12. There are striking inconsistencies in the account of the SKS having been immediately afterward kicked into the bedroom across the hall by Richard Hayes [the account given by both Loe and Hayes], both due to the obvious practical difficult (if not impossibility) of such a feat, but also because the fourth officer entering the basement (Shawn Cox), whose entry after the shot was fired was delayed by initial attempts to enter the rear of the house, and running around to the front of the house to enter by the front door, testified the SKS was in Chuck Kuyper's hands when he entered the basement, and Loe and Elmore were standing together talking. The third officer entering the basement (Elmore), who entered before Cox, testified the gun was on the floor of the bedroom across from decedent when he entered the basement, ahead of Cox.

Q. How long an interval do you think elapsed between the time the fatal -- the fatal shot was actually fired and the time the radio call was made?

A. Matt --

BY MR. GROVES: Which radio call?

Q. (By Mr. Anderson): The radio call reporting the shot fired that you made.

A. A matter of seconds.

Q. Okay. Was that made from down in the basement of the home?

A. Yes.

Q. And after the shot was fired, you followed officer Loe. Or I say followed him, you went after him down into the basement; is that correct?

A. Yes.

Q. And what did you do immediately after that?

A. Went around -- There's a room to the right of the hallway. I went around the hallway, told Deputy Loe I was going to kick the gun away, which I did, and then I checked for a pulse.

Q. Okay. And when you went in the room at the right of the hallway, that's the rec room where the pool table is and so forth; is that right? It was -- Okay. As you were standing in the hallway looking toward the deceased at the end of the hall --

A. Yes.

Q. -- this room is to your right--

A. Yes.

Q. -- and it has two doors--

A. Yes.

Q. -- in it; is that correct? And did you go in the first door, the nearest door to you?

A. The door by the stairwell.

Q. And then you went down through that room and you went out the other door; is that right?

A. Yes.

Q. And when you did that, you immediately kicked the rifle into the adjoining room?

A. Yes.

Q. At any time in your presence, was that rifle handled by any of the officers on the scene?

A. I believe -- No. While I was there on the scene, it was -- it was never touched. I never saw anybody touch it.

Q. Okay. What did you start to say you believed?

A. State's the only one that handled it.

Q. Okay. So you believe the state trooper picked up the rifle, bagged it or whatever they did with it, and took possession of it; is that right?

A. Yes.

Richard Hayes went further in his deposition to state the kicking of the gun was immediately after the firing of the shot, while he and David Loe were yet alone in the basement:

Q. You were the second officer into the home; is that correct?

A. Yes, sir.

Q. Officers Elmore and Cox were around behind the home?

A. I believe so.

Q. And I believe Officer Loe has testified he saw them at the northwest corner of the house at a sliding door with a flashlight?

A. Okay.

Q. But when you left the landing and went into the basement, was there anybody-- Or I say basement, downstairs, whatever you want to call it-- was there anybody down there other than -- at that moment other than yourself, Officer Loe, and the deceased?

A. No.

Q. And at the time you came --you went through the room to your right, went in one door, came out the other, kicked the gun into the bedroom across the hall, was there anybody down there other than yourself and Officer Loe and the deceased?

A. At one point in time Deputy Elmore -- Elmore and Cox entered down there.

Q. Well, I'm not asking at any one point in time, but I'm asking when the gun was kicked into that adjoining room.

A. I don't believe they was in there at that time.

Q. Okay. That happened immediately after the shot was fired; is that correct?

A. Yes.

Q. And, then, it's your understand-- Is it your understanding that Deputies Elmore and Cox tried to force sliding glass doors at the back of the house after the shot was fired? Did you -- Have you heard them say that?

A. I believe Deputy Elmore said he, at first, tried to but then decided to go around to the front of the house and enter the door.

Q. They were not successful in opening either sliding door to the rear of the house; is that right?

A. Yes.

Q. And they tried both of them?

A. Yes.

Q. And they came around the east side of the house?

A. I -- I don't know which way they came.

Q. But they had to come -- Whatever direction they went, they had to come all the way around the house and in the front door; is that right?

A. Yes.

Q. And then down the stairs and into the
downstairs?

A. Yes.¹⁰⁵

Deputy Hayes was interviewed by Franklin Chambers of the Missouri State Highway Patrol on June 7, 2001, at which time deputy Hayes represented to Franklin Chambers he and Loe were the only persons in the basement when he "kicked the firearm", that it happened "immediately after the shooting", at a moment when he and Loe "were the only two officers in the hallway".¹⁰⁶ Hayes further told Chambers that the rifle had been pointing down the hall, in the direction of the staircase, parallel to the wall, prior to it being kicked.¹⁰⁷

Deputy Elmore testified he was at the sliding door at the northwest corner, behind the home, when the shot was fired; that he and Officer Cox tried to gain entry into the basement through the northwest sliding door, were unsuccessful, that they did not try the other (northeast) sliding door but then went to the front door of the home and went in and down the steps, where he

¹⁰⁵ Relator's Ex. G, Deposition of Richard Hayes, Page 68, line 3, to page 70, line 10.

¹⁰⁶ Respondent's Ex. 24, Deposition of Franklin Chambers, MSHP, Page 21, line 15, to Page 22, line 24.

¹⁰⁷ Id., Page 23, line 10, to page 23, line 25.

saw Loe standing closer to the entrance of the hallway and Hayes a little bit farther down "and a male subject slumped over in the hallway, half in the hallway, halfway in a room".¹⁰⁸

Q. Okay. And which way was Officer Hayes facing? Or what was he doing when you saw him?

A. I think he had just walked out of the -- out of the room where he had kicked the -- the SKS assault rifle that -- that the deceased had been carrying and had pointed at David Loe. Had -- He had just come from that room where he had just kicked that weapon and was walking back toward David.

Q. And that's when -- That's the first thing you saw when you entered the lower level of the home?

A. Yes.

Q. And Officer Hayes was walking -- kind of walking towards you at that time?

A. I believe so.

Q. From the direction of the deceased's body?

¹⁰⁸ Relator's Ex. H, deposition of John Elmore, at Page 44, line 6, to Page 45, line 13.

A. Well, actually from the -- I believe he was coming from the direction of the -- of the weapon.

Q. From the bedroom direction?

A. I believe so. Yeah.

Q. And we're talking about, now, the bedroom that was kind of on the opposite wall from where the deceased was slumped in the door jamb, the bedroom across the hall?

A. Right. He may have just been standing there looking at the deceased. I don't know. But he -- he was right there in that archway.

Q. You say "that archway." I'm not sure what you're referring to.

A. In the archway that -- where he had kicked the -- where he had kicked the -- the rifle.

Q. Is that the same -- Are you saying an archway is a doorway?

A. Yeah.

Q. Is that the doorway where the deceased was slumped or was that the doorway across the hall from where the deceased was slumped?

A. Across the hall.

Q. And you think he was standing in that doorway?

A. I believe so.

Q. And walking toward you as you -- Okay. And at that time the rifle had already been kicked into the bedroom?

A. I believe so.

Q. So you never saw the rifle in the hands of the deceased?

A. No.

Q. And was Officer Cox in front of you or behind you or beside you?

A. I believe he was behind me.¹⁰⁹ [Emphasis added].

Officer Shawn Cox also testified that after the shot was fired, both he and Deputy Elmore first attempted unsuccessfully to kick through both back doors of the home, then they ran around the home and entered the front door and went down the stairs.¹¹⁰

¹⁰⁹ Id., at Page 46, line 14, to Page 48, line 17.

¹¹⁰ Relator's Ex. I, deposition of Shawn Cox, Page 23, line 6, to Page 21.

Q. Okay. Was the door already standing open when you went to the front of the house?

A. I -- Yes, sir. Yes.

Q. And who was in front, yourself or Mr. Elmore?

A. Deputy Elmore was in front of me.

Q. And did both of you then immediately go on into the house and down the stairs?

A. Yes, sir.¹¹¹

Officer Shawn Cox, the fourth officer arriving in the basement, who followed behind Officer Elmore, describes event of the next several minutes. The SKS rifle, he says, was in the hands of the decedent during that time. His June 7, 2001 typewritten and signed statement reads as follows, on the issue of the rifle:

"Deputy Elmore entered the house and I followed, and we both went down the stairs to the basement. Deputy Loe was standing near the doorway in to the basement about where he was standing when I saw the flash of his pistol. I know that Deputy Hayes was in the basement at this time, but I do not know where he was. I looked down

¹¹¹ Id., Page 24, lines 14-21.

the hallway and saw a male subject in a sitting like position near the far end of the hallway, with a rifle in his lap. The rifle was pointed down the hallway in the direction from which Deputy Loe had shot him. Deputy Loe told me not to step on the shell casing. I walked into the hallway and up to the subject, and noticed a magazine in the rifle, and blood on it and the rifle. Someone, I believe Deputy Elmore, said to look at the bayonet, which I saw. I did not touch the rifle or the subject, at that time.

I went back down to where Deputy Loe was located and at some point retrieved a bucket and placed it over where the shell casing was, so it would not be disturbed. I went upstairs to get a camera and film from the car, and then aided Deputy Loe in taking photographs. When I returned down stairs at some point, I saw that the rifle had been kicked into the other room. I went inside the room where the gun had been kicked and where the gun case was

locate. In that room, the rifle with blood on it was laying on the floor."¹¹² [Emphasis added].

Deputy Shawn Cox also gave deposition testimony on the subject, and to give proper context, that deposition testimony is set out at some length:

Q. Okay. And what did you see?

A. I -- I remember people standing about. I went downstairs and that's -- I saw the -- I saw Deputy Loe and Hayes were both down there. I saw, it would be, Mr. Kuyper there in the hallway. And I spoke with Deputy Loe. He mentioned --

BY MR GROVES: His question was, What did you see, and you told him that.

A. Okay.

Q. (By Mr. Anderson): What did you observe about Mr. Kuyper's body?

A. He was in a -- he was in the seated type position on the floor against the -- against the doorjamb.

Q. Was he moving?

¹¹² Respondent's Ex. 9, typewritten Statement of Shawn Cox, June 7, 2001, middle second page.

A. No, sir.

Q. Was his body trembling or shaking or any spasms that you noticed?

A. No, sir.

Q. Was he bleeding?

A. There was blood on the floor.

Q. Did you see any blood pulsing or flowing from his body?

A. There was -- It was pouring from the -- the head area.

Q. When this is pouring from the head, did it appear to be that it was just like -- just more or less draining or did it seem to be pumping, pulsing?

A. It was more of just a running. It was just a steady stream.

Q. What did you do -- then do?

A. I --

Q. Well, just a moment before I ask that. What else-- What, if anything else, did you observe about Mr. Kuyper or anything about him?

[Objection omitted]

A. I -- I don't exactly know.

Q. Did you see anything else?

[Objection omitted]

A. I -- I don't exactly -- About the house? Or I'm not sure --

Q. (By Mr. Anderson): Well, you were -- you went down and you saw -- You said Deputy Loe and Hayes were both down there.

A. Uh-huh.

Q. Were they down in the area where Mr. Kuyper's body was?

A. I don't recall exactly where they were standing at the time.

Q. Okay. You've described where Charles Kuyper's body was.

A. Uh-huh.

Q. You said in the hall. Was it mostly in the hall?

A. It was right in the doorjamb area between the pool table -- The room where the -- There was a pool table, I believe, and the hallway, and it was right there in the doorjamb.

Q. Were -- Do you remember, were his legs in the hallway or in the pool hall -- the Pool Room?

A. I don't recall exactly where.

Q. Were they folded or stretched out?

A. They were -- He was in a seated-type position.

Almost -- His legs were folded.

Q. Folded under him or how?

A. Just bent, almost as -- Just bent. I -- Underneath him.

Q. Did you and Officer Hayes have any -- Well strike that. Do you recall Officer Loe and Officer Hayes having some discussions there?

A. I know there was talking but exactly, I don't know.

Q. But there was talking between those two individuals you recall?

A. I do remember Hayes saying, Call 911, or We need an ambulance, but I don't remember what other talking there was.

Q. And when he said that, where did -- were you looking at him as he said this?

A. No. I just -- I heard it. I heard him say that.

Q. Where did his voice come from?

A. I'm not -- I'm not sure. I'm not even sure where I was standing at the time. I just remember it was -- that he announced it.

Q. Do you recall anything else that either Officer Hayes or Officer Loe or Officer Elmore said at that time?

[Objection omitted]

A. I don't know. What time?

Q. (By Mr. Anderson): At the time you're standing there. You've run around from the back. You've descended the stairs. You went -- you approached the body. You're looking at the body. You've described Officer Hayes and Officer Loe talking, and you said Officer Hayes made the -- made a statement, Call 911. Do you remember anything else that either of them said at that time?

A. No, I don't remember what was said. I spoke to Deputy Loe at that time, and he told me to go to his car and get the camera and film. That we needed to

get photographs and everything to preserve the crime scene there.

Q. Do you have any judgment how long you were in the basement before going out for a camera?

A. I have no idea. I -- I really couldn't be sure on how long I was there.

Q. No idea at all?

A. No, sir.

Q. During your 470 hours of training at Drury, did they -- was there any part of that related to criminal investigations?

A. Yes, sir.

Q. Was there any part of it which relate d to taking notes about what you -- your observations might have been or what you saw in connection with an incident that you were investigating or you were at?

A. Yes, sir. There was note-taking courses.

Q. Was there anything discussed about the importance of keeping a record of timing, of time of day, hour of day, when you're conducting any

activities that are -- you think you may have to testify about in court?

A. Yes, there was. We -- we talked about the importance of time.

Q. Did Chuck Kuyper appear to be breathing?

A. No, sir.

Q. Did you do anything to check his pulse or check for a pulse?

A. I did check for a pulse. There was -- there was none.

Q. And how did you do that?

A. Checked his neck in this area there and there was -
- there was no pulse.

Q. And did you do anything else to check whether he was breathing or whether he was alive at that point in time?

A. No, sir, not at that time.

Q. At that point in time did you observe any weapon present?

A. There was a -- the rifle that was -- he had it in his -- in his arms. I'm not exactly sure what type. I don't know. But he did have a rifle in his hands.¹¹³

Deputy David Loe in his typewritten statement of June 4, 2001, described the gun being kicked out of Charles Kuyper's hands immediately after the shooting:

"Deputy Hayes immediately came down behind me, and he stepped into the basement area. I waited by the corner of the wall immediately across from the basement entry area and Deputy Hayes then entered the room where a pool table was located with had two doors, one of which was at the far end of the hallway where Charlie Kuyper was located. Both doors were open. I saw Deputy Hayes step from the room where the pool table was located and kick the rifle from the lap of the subject and into the room across the hall."

¹¹³ Relator's Ex. I, Deposition of Shawn Cox, at Page 24, line 22, to Page 31, line 4.

Sergeant Miles Parks interviewed David Loe on June 7, 2001, and prepared a written summary of that interview, two paragraphs are especially pertinent at this point, as Sgt. Parks quotes directly from what Loe told him of the immediate aftermath of the shot:

"f. Richard came in directly behind me and I stepped directly into the hallway. Richard entered the pool room as I walked toward the suspect. Richard went into the pool room and approached the suspect. I think the gun was still pointed down the hallway. Richard kicked the gun from the suspect into the bedroom across the hall. Then I checked for a pulse on the suspect's neck. I checked it a couple of times. There was no pulse. I never saw Crooks in the house. Hayes checked the suspects pulse too."

"g. I cleared the bedroom for other suspects. Hayes cleared the open room in the back. Elmore and Cox came down after we had cleared the bedroom and the open room. The open room and

the bedroom had lights on. No lights were on in the hallway or the pool room."¹¹⁴

At 2:27:55 deputy Richard Hayes radios "shots fired".¹¹⁵ From the first deputy's arrival at the Kuyper residence until the radio transmission "shots fired" was made by Deputy Hayes, was exactly 13 minutes.¹¹⁶ That 13 minute time period covered the entire investigation performed before entry of the house, all of the discussions the officers had with any of the persons out front in the yard, all of the officers' planning on what they were going to do, all their decision making including the decision to use lethal force.¹¹⁷

Officer Hayes said the entire conversation with Mary Kuyper prior to breaking her door was as short perhaps as 30 seconds.¹¹⁸ It was as little as 60 seconds later that the door was forced¹¹⁹ and as few as 10 seconds later by

¹¹⁴ Respondent's Ex. 12, Sgt. Miles Park's Report of Interview of David Loe on June 7, 2001, page 2, paragraphs "f" and "g" [Emphasis added].

¹¹⁵ Respondent's Ex. 10, 911 Emergency Services call record.

¹¹⁶ Id. 911 Emergency Services call record.

¹¹⁷ Relator's Ex. C, David Loe's Deposition, Page 116, line 12, to Page 117, line 10.

¹¹⁸ Relator's Ex. G, deposition of Richard Hayes, Page 44, lines 16-19.

¹¹⁹ Id., page 44, lines 20-22.

Deputy Richard Hayes' account,¹²⁰ or within less than 3 seconds by the account of Bill Youngblood¹²¹, the fatal shot had been fired.

At 2:31:39, deputy Hayes radioed for an ambulance to be sent. Chuck Kuyper was bleeding and continued to bleed for at least as long as a few minutes.¹²²

A scaled drawing of the floor plan of the scene of the shooting, the lower level of the Kuyper home, drawn to ¼" Scale, is found at Exhibit/Tab # 2, Volume 1 of Respondent's Exhibits.¹²³ A man's image is depicted in a sitting position in the doorway in which the Officers testified Chuck Kuyper was slumped after the fatal shot, and approximates the location of the body post-shooting. For illustrative purposes, the SKS weapon is drawn to scale¹²⁴ and

¹²⁰ Id., Page 55, line 24, to Page 56, line 14.

¹²¹ Respondent's Ex. 19, deposition of Bill Youngblood, Page 28, line 15, to Page 29, line 9.

¹²² Relator's Ex. C, David Loe's Deposition, Page 133, line 20, to Page 134, line 10; Relator's Ex. G, Richard Hayes' Deposition, Page 31, lines 2-13; Respondent's Ex. 27, deposition of James Shelley, M.D.

¹²³ Respondent's Ex. 2, Kuyper Floor Plan, scaled.

¹²⁴ Respondent's Ex. 3, specification sheets for an SKS rifle are provided herewith. One identical to that claimed to have been wielded by Kuyper at time

depicted as Officers Loe and Hayes testified it was positioned both before and after Officer Hayes allegedly kicked it from decedent's grasp into the bedroom across the hall.¹²⁵ The SKS holds 10 rounds, 11 rounds if a round is chambered. Fully loaded it weighs 8.8 pounds. Length with bayonet fixed as it was on June 4, 2001, is 52 inches (Exhibit/Tab 3, Volume 1, Exhibits of Respondent).

The door openings to the Pool Room and the bedroom across the hall measure 29.25", measured width trim to trim inside the door, and accommodate a 30" standard door which overlaps the trim on either side.¹²⁶ As depicted by the scaled drawing, no doors were actually mounted on the Pool Room side; in the Lower Level bedroom door frame, a door was mounted, opening inward, swinging to the east, and the door opening in which Kuyper was slumped is not

of the shooting has been measured and is consistent with those specifications, having an overall length of 52" with bayonet mounted as per the testimony of the Officers and depicted in the photographs taken post-shooting.

¹²⁵ Officer Elmore, the third officer into the hallway, said he never saw Kuyper with a gun. Officer Cox, the fourth officer down, said he saw it only in Kuyper's hands.

¹²⁶ Respondent's Ex. 2.

directly across from the door opening to the bedroom, but offset 8" further west.¹²⁷

According to the 911 emergency services log, Lieutenant Tim Gideon (Unit 130) arrived on scene at 2:45:26. Until that time, the "investigation" of the shooting incident was in the hands of the shooter, Deputy David Loe, according to Sheriff Richard Hill.¹²⁸ The Sheriff was called at home in Kimberling City by the 911 dispatcher, Kent Doucey, at 2:33:15.¹²⁹ En route to the scene, Sheriff Hill called the Missouri State Highway Patrol from his cell phone and requested the dispatcher "get ahold of Sergeant Knowles", so there would be no perception "that, you know, we're trying to cover anything up."¹³⁰ The Sheriff testified he arrived on scene "maybe close to 3:00".¹³¹

Prior to his deposition taken in this lawsuit on November 27, 2001, David Loe had given no recorded statement (no audio, no video) to any

¹²⁷ Id.

¹²⁸ Relator's Ex. K, deposition of Richard Hill, Page 40, lines 11-25.

¹²⁹ Respondent's Ex. 10, 911 Dispatch Log, and Relator's Ex. K, deposition of Richard Hill, Page 18, lines 10-23.

¹³⁰ Id., deposition of Richard Hill, Page 20, line 8 to Page 21, line 21.

¹³¹ Id., Page 20, lines 3-7. The dispatch log indicates an "On Scene Event Time of 6:52:07", which is presumed to be in error.

investigative authority concerning the shooting death of Chuck Kuyper.¹³² As of February 11, 2004 (date of Officer Knowles' deposition) David Loe had yet to give any recorded statement to any officer of the Missouri State Highway Patrol concerning the death of Chuck Kuyper.¹³³

The following close family members of the deceased were interviewed the day of the shooting by the Missouri State Highway Patrol:

<u>Witness:</u>	<u>Date:</u>	<u>Time:</u>	<u>Officer Interviewing</u>
Hazel S. Rice	June 4, 2001	Not noted.	Parks, MSHP
Mary L. Kuyper	June 4, 2001	Not noted	Parks, MSHP
Kimberlee D. Kessinger	June 4, 2001	06:21	Chambers, MSHP
Mary E. Miller	June 4, 2001	05:45	Chambers, MSHP
Albert P. Miller	June 4, 2001	Not noted	Chambers, MSHP

Each of the above witnesses told the Highway Patrol essentially the same facts: that the door was forcibly broken without need and against the will of the owner of the home, that there was no announcement or forewarning given those inside the home that the door was about to be broken or the home

¹³² Relator's Ex. K, deposition of Richard Hill, Page 52, line 19, to Page 53, line 17.

¹³³ Respondent's Ex. 26, deposition of George Knowles, MSHP, Page 22, lines 8-15.

entered; there was no shout, "Sheriff!" or "Sheriff's Department!"¹³⁴; that there was no shout "Drop the gun! Drop the gun!"¹³⁵

The same morning, Sheriff Richard Hill called attorney Richard Crites "to come down".¹³⁶ The officers were "told by Sheriff Hill that we were going to talk to our attorney, Richard Crites, and was given a time to be at the Sheriff's Office" [on June 4, 2001].¹³⁷ The Sheriff asked the Officers to compile "enough notes" that "they could sit down when Mr. Crites got here and individually they would -- they would write their report based on their notes."¹³⁸ There was no effort made to separate the officers or keep them separated from

¹³⁴ Neither did Richard Kuyper, standing a short distance away, hear such a shout. See: Relator's Ex. F, deposition of Richard Kuyper, Page 139, lines 12-17.

¹³⁵ Neither was this heard by Richard Kuyper. Id., Page 140, line 25, to Page 141, line 6.

¹³⁶ Relator's Ex. K, deposition of Richard Hill, Page 46, lines 3-6.

¹³⁷ Relator's Ex. H, deposition of John Elmore, Page 13, line 21, to page 14, line 1.

¹³⁸ Relator's Ex. K, deposition of Richard Hill, Page 51, line 6-22.

each other while they were compiling notes.¹³⁹ Attorney Crites typed prepared statements for each of the Deputies to sign.¹⁴⁰

Sheriff Hill acknowledged it would be normal procedure after a death by shooting to have the person causing the death give a video or audio taped interview, or at least a written statement in his handwriting.¹⁴¹ Yet, to date of his deposition taken March 8, 2002, he acknowledged only by deposition in this lawsuit had that been done.¹⁴² Nor did Sheriff Hill preserve the handwritten notes of what had happened, that his officers had written out the morning of the shooting at his request.¹⁴³

Sergeant George Knowles testified that he had been involved in investigation of 10 to 15 "officer-related" shooting investigations in his career.¹⁴⁴ He responded to the Kuyper residence on June 4, 2001. He spoke briefly with

¹³⁹ Id., page 52, lines 4-18.

¹⁴⁰ Relator's Ex. H, deposition of John Elmore, Page 14, lines 2-7.

¹⁴¹ Relator's Ex. K, deposition of Richard Hill, Page 54, line 7, to Page 55, line 8.

¹⁴² Id., Page 55, line 24, to Page 58, line 10.

¹⁴³ Id., Page 58, line 22, to Page 59, line 6.

¹⁴⁴ Respondent's Ex. 26, deposition of George Knowles, MSHP, Page 6, lines 20-25.

Sheriff Hill.¹⁴⁵ Fairly soon after arriving he identified by name David Loe as the officer who had fired the fatal shot.¹⁴⁶ He also learned there was a Missouri State Trooper who had been present on the premises although not in the home, Corporal Crooks.¹⁴⁷ Armed with this information, he had no recollection of ever speaking with Loe, at the scene.¹⁴⁸

Sergeant Knowles made no attempt to talk to him at the scene although he conceded it was important to the investigation.¹⁴⁹ To his knowledge, no officer from the Missouri State Highway Patrol talked with David Loe at the scene.¹⁵⁰ Neither could Sergeant Knowles recall speaking with Corporal Crooks at the scene.¹⁵¹ Nor could he recall having any conversation there with Richard

¹⁴⁵ Id., Page 7, lines 22-25.

¹⁴⁶ Id., Page 8, line 24, to Page 9, line 6.

¹⁴⁷ Id., Page 9, lines 7-13.

¹⁴⁸ Id., Page 9, lines 17-18.

¹⁴⁹ Respondent's Ex. 26, deposition of George Knowles, MSHP, page 18, lines 17-21.

¹⁵⁰ Id., Page 10, lines 17-20.

¹⁵¹ Id., Page 9, lines 11-16.

Hayes.¹⁵² He didn't remember ever talking at the scene with deputy John Elmore.¹⁵³ Nor could he recall speaking with deputy Shawn Cox.¹⁵⁴

The only officer Sergeant Knowles recalled speaking with at the scene was Sheriff Hill, with whom he spoke only briefly, and who had not been present at the time of the shooting.¹⁵⁵ If he did speak at all with any of the officers directly involved (which he did not recall doing), he made no notes or memoranda summarizing anything which was said.¹⁵⁶

At his deposition, Sergeant Knowles testified Sergeant Miles Parks of the Missouri Highway Patrol was the "officer in charge" once the highway patrol assumed the investigation.¹⁵⁷ Sergeant Miles Parks, a 35-year Patrol veteran, testified that Sergeant Knowles was the officer in charge, the supervisor leading

¹⁵² Id., Page 23, lines 3-7.

¹⁵³ Id., Page 23, lines 8-12.

¹⁵⁴ Id., Page 23, lines 13-15.

¹⁵⁵ Id., Page 23, lines 8-12.

¹⁵⁶ Respondent's Ex. 26, deposition of George Knowles, MSHP, page 23, lines 16-21.

¹⁵⁷ Id., Page 10, lines 2-4.

the investigation.¹⁵⁸ Lieutenant Franklin Chambers testified that Sergeant Parks and Sergeant Knowles were in charge of the investigation, but Sergeant George Knowles had probably, overall supervisory responsibility.¹⁵⁹

Lt. Franklin Chambers testified his own purpose in going to the scene was to "investigate the shooting",¹⁶⁰ but he had no idea whether any of the Officers actually involved in the shooting incident were present when he was there, investigating.¹⁶¹ Sergeant Parks likewise did not speak with deputy David Loe at the death scene.¹⁶²

Officers Parks and Knowles made an appointment to speak with the shooting-involved deputies on June 5, 2001.¹⁶³ They drove to Galena, county seat of Galena, for the purpose of that interview, but when they arrived at the sheriff's office at nine-o'clock that morning "were advised by Lieutenant Tim

¹⁵⁸ Respondent's Ex. 25, deposition of Sergeant Miles Parks, Page 4, line 25, to Page 5, line 25.

¹⁵⁹ Respondent's Ex. 24, deposition of Franklin Chambers, Page 6, lines 2-7.

¹⁶⁰ Id., at Page 8, lines 12-13.

¹⁶¹ Id., at Page 8, lines 15-22.

¹⁶² Respondent's Ex. 25, deposition of Miles Parks, Page 8, lines 22-25.

¹⁶³ Respondent's Ex. 24, deposition of Franklin Chambers, Page 10, line 7, to Page 12, line 2.

Gideon that the officers had not been called in and the Sheriff advised the officers would not be available for an interview."¹⁶⁴

¹⁶⁴ Id.

POINTS RELIED ON

I.

THIS COURT MUST ABOLISH THE DOCTRINE OF OFFICIAL IMMUNITY WHICH RELATOR HILL CLAIMS AS A CLOAK OF IMMUNITY FROM PLAINTIFF'S SUIT, BECAUSE IT WORKS INJUSTICE, IS APPLIED WITHOUT REGARD TO RIGHT OR WRONG, DENIES BASIC SUBSTANTIVE RIGHTS OF THE INDIVIDUAL, IS NOT FAIR NOW AND HAS NEVER BEEN FAIR NOR WILL IT EVER BE FAIR, IT RUNS AGAINST THE BASIC PREMISE UPON WHICH JUSTICE IS FOUNDED THAT THERE BE A RIGHT FOR EVERY WRONG, AND WHATEVER REASON FOR THE DOCTRINE IN ITS INCEPTION DOES NOT EXIST TODAY, OR WEIGHED AGAINST THE DISRESPECT IT ENGENDERS FOR OUR LEGAL SYSTEM, DOES NOT JUSTIFY ITS COST.

Cases/Authorities

Abernathy v. Sisters Of St. Mary's, 446 S.W.2d 599 (Mo. banc 1969).

Garnier v. St. Andrew Presbyterian Church of St. Louis, 446, S.W.2d 607 (Mo. banc 1969).

Jones v. State Highway Commission, 557 S.W.2d 225 (Mo. banc 1977).

II.

IF THIS COURT DOES NOT ABOLISH OFFICIAL IMMUNITY, IT OUGHT TO MODIFY THE IMMUNITY TO THE EXTENT OF MAKING IT A TEMPORARY IMMUNITY COMMENSURATE WITH THE TENURE OF THE PUBLIC OFFICE HELD, DURING WHICH TIME THE STATUTE OF LIMITATIONS MIGHT BE TOLLED, ALLOWING A VICTIM TO BRING THE ACTION AT SUCH TIME AS THE PUBLIC OFFICER WAS NO LONGER SO EMPLOYED.

Cases/Authorities

Jones v. Clinton, 72 F.3d 1354 (8th Circ. 1996).

Butz v. Economou, 438 U.S. 478, 506 (1978).

Temporary Presidential Immunity: Adhering to the Separation of Powers Doctrine and the Will of the Framers for Civil Damages Litigation Involving the President-- the Jones v. Clinton Case, Note, Joseph R. Jeffrey, 40 St. Louis L.J. 833, Summer 1996.

III.

IF OFFICIAL IMMUNITY IS ABOLISHED OR MODIFIED BY THIS COURT, NO GOOD CAUSE EXISTS WHY THE GENERAL PRINCIPAL OF VICARIOUS LIABILITY THROUGH RESPONDEAT SUPERIOR OUGHT NOT APPLY, AS BETWEEN A SHERIFF AND HIS DEPUTY.

Cases/Authorities

Jones v. State Highway Commission, 557 S.W.2d 225 (Mo. banc 1977).

Abernathy v. Sisters Of St. Mary's, 446 S.W.2d 599 (Mo. banc 1969).

IV. RESPONDENT DID NOT ERR IN OVERRULING RELATOR RICHARD HILL'S MOTION FOR SUMMARY JUDGMENT, BECAUSE THERE IS SUBSTANTIAL CREDIBLE EVIDENCE FROM WHICH A JURY MIGHT REASONABLY FIND RELATOR, BY HIS ACTIONS SUBSEQUENT TO THE SHOOTING, RATIFIED THE ACTIONS OF DAVID LOE.

Davis-Bey v. Missouri Department of Corrections, 944 S.W.2d 294 (Mo. App. W.D. 1997).

ARGUMENT

I. THIS COURT MUST ABOLISH THE DOCTRINE OF OFFICIAL IMMUNITY WHICH RELATOR HILL CLAIMS AS A CLOAK OF IMMUNITY FROM PLAINTIFF'S SUIT, BECAUSE IT WORKS INJUSTICE, IS APPLIED WITHOUT REGARD TO RIGHT OR WRONG, DENIES BASIC SUBSTANTIVE RIGHTS OF THE INDIVIDUAL, IS NOT FAIR NOW AND HAS NEVER BEEN FAIR NOR WILL IT EVER BE FAIR, IT RUNS AGAINST THE BASIC PREMISE UPON WHICH JUSTICE IS FOUNDED THAT THERE BE A RIGHT FOR EVERY WRONG, AND WHATEVER REASON FOR THE DOCTRINE IN ITS INCEPTION DOES NOT EXIST TODAY, OR WEIGHED AGAINST THE DISRESPECT IT ENGENDERS FOR OUR LEGAL SYSTEM, DOES NOT JUSTIFY ITS COST.

In a nation founded upon the principle that all persons are equal under the law, official immunity has no place. Official immunity as it has existed in Missouri states that public officers acting within the scope of their authority from liability for injuries arising from "their discretionary acts or omissions". Rustici v. Weidemeyer, 673 S.W.2d 762, 768-769 (Mo. banc 1984).

Being a common law concept, it is this Court's duty to review its continuing usefulness and viability under changing times and realities:

"One of the great virtues of the common law is its dynamic nature that makes it adaptable to the requirements of society at the time of its application in court. There is not a rule of the common law in force today that has not evolved from some earlier rule of common law, gradually in some instances, more suddenly in others, leaving the common law of today when compared with the common law of centuries ago as different as day is from night. The nature of the common law requires that each time a rule of law is applied it be carefully scrutinized to make sure that the conditions and needs of the times have not so changed as to make further application of it the instrument of injustice." [Justice Warren D. Welliver, separate opinion in S.A.V. v. K.G.V., 708 S.W.2d 651, 654 (Mo. banc 1986).

The effect of any immunity is to protect an alleged tortfeasor at the expense of the victim. The tort being admitted, it denies the victim the ability to sue for redress. Respondent argues that immunity by its very nature runs directly counter to the fundamental concept of justice anywhere, that for every wrong, there be a right.

Addressing the effect of the removal of a different common law immunity, sovereign immunity, Justice Seiler noted, in Jones v. State Highway Commission, 557 S.W.2d 225, 230 (Mo. banc 1977):

"The removal of an immunity does not impose absolute or strict liability. It subjects the government and its units, subdivisions, agencies or bodies to the same rules as private corporations, if a duty has been violated and a tort committed. It places responsibility on the state or an agent of the state, county, municipality, or other governmental body under the doctrine of respondeat superior for injuries negligently caused by its agents, servants and employees in the course of employment."

Twenty years ago, the justification for official immunity was stated thusly:

". . . commentators have long agreed that society's compelling interest in vigorous and effective administration of public affairs requires that the law protect those individuals who, in the face of imperfect information and limited resources must daily exercise their best judgment in conducting the

public's business." Kanagawa v. Freeman, 685

S.W.2d 831, 835 (Mo. banc 1985).

This Court should not follow blindly the rules of the 16th century, denying redress to those injured or killed by negligence of a public officer, on no better ground than the fear that suits by the maimed or the estates of the killed, might deter some occasional anonymous public officer from the "vigorous and effective administration of public affairs".

Judges and juries are trusted to resolve claims of medical malpractice, without fear that such claims might impede the "vigorous and effective administration of medicine". Lawyers receive no immunity from suits by their clients, despite the fact that allowing such suits perforce takes them away from the vital administration of justice. School teachers, contractors and bankers receive no such immunity, but somehow banking transactions still get handled, school gets taught, homes are built. Dedicated people do not turn away from a chosen field of interest from uneasiness over the prospect that they might be held accountable for a future act or omission.

There is not one shred of empirical evidence to suggest there would be any adverse affect upon the public, should official immunity be discarded. Yet in the name of following legal tradition, the injured, maimed or killed citizens of this state are prevented access to the Courts for the opportunity to redress their grievances. It is a shame and disgrace that such a rule continues in existence.

The Court should not shirk from its duty to adapt the common law to today's needs. Given the opportunity, it removed an immunity preventing a spouse from redress for torts committed by the other spouse during the marriage:

"It belies reality and fact to say there is no tort when the husband either intentionally or negligently injures his wife" or vice versa . . . Missouri did not adopt the English common law as a substantive statute but rather as decisional law of which this Court is custodian, with authority to alter or abrogate a common law doctrine absent contrary statutory direction by our legislature." Townsend v. Townsend, 708 S.W.2d 646, 649-650 (Mo. banc 1986), citing Jones v. State Highway Commission, 557 S.W.2d 225, 228 (Mo. banc 1977); S.A.V. v. K.G.V., 708 S.W.2d 651 (Mo. banc 1986).

. . .

"As to public policy, it is little comfort to the victim of an intentional shooting at the hands of her husband that her recovery is barred by a common law doctrine having as its basis her

protection and benefit: so great a favorite is the female sex in the laws of England." Townsend, Id., citing 1 W. Blackstone, Commentaries, 445.

Likewise this Court abrogated long-standing immunities preventing a child from suing a parent, and adopted a "reasonable parent" standard for addressing allegations of parental negligence. Hartman v. Hartman, 821 S.W.2d 852, 858 (Mo. banc 1991). In other cases the Court has seen fit to remove the immunity long-enjoyed by charitable hospitals, Abernathy v. Sisters Of St. Mary's, 446 S.W.2d 599 (Mo. banc 1969), and churches, Garnier v. St. Andrew Presbyterian Church of St. Louis, 446 S.W.2d 607 (Mo. banc 1969).

Removing immunities promotes personal responsibility. There is no reason to exempt a public officer from accountability for his negligence, or that of those whom he selects to assist in performance of the duties of his office. It should be a matter of course, that we would expect a public officer to stand accountable for his tortious conduct.

II.

IF THIS COURT DOES NOT ABOLISH OFFICIAL IMMUNITY, IT OUGHT TO MODIFY THE IMMUNITY TO THE EXTENT OF MAKING IT A TEMPORARY IMMUNITY COMMENSURATE WITH THE TENURE OF THE PUBLIC OFFICE HELD, DURING WHICH TIME THE STATUTE OF LIMITATIONS MIGHT BE TOLLED, ALLOWING A

VICTIM TO BRING THE ACTION AT SUCH TIME AS THE PUBLIC OFFICER WAS NO LONGER SO EMPLOYED.

If the purpose of official immunity is to protect the public from neglect of office while the officer defends himself in court, then a lesson might be learned from the approach of the federal court, in Jones v. Clinton, 72 F.3d 1354 (8th Circ. 1996). "Temporary immunity" would serve to protect the public from its public officers being required to defend suits while in office, and yet permit injured parties to bring their claims when the term of office ended. Although not a preferred remedy, it would be more palatable than a total denial of access to the court. Why ought a remedy be more extensive than needed to protect the public interest, if it serves to harm the individual?

It should be the case that no man in this country should be held so high, even the President, that he is above the law. All government officers are in fact servants of the law and should be bound to obey it. Butz v. Economou, 438 U.S. 478, 506 (1978).

III.

IF OFFICIAL IMMUNITY IS ABOLISHED OR MODIFIED BY THIS COURT, NO GOOD CAUSE EXISTS WHY THE GENERAL PRINCIPAL OF VICARIOUS LIABILITY THROUGH RESPONDEAT SUPERIOR OUGHT NOT APPLY, AS BETWEEN A SHERIFF AND HIS DEPUTY.

This Court in Jones v. State Highway Commission, 557 S.W.2d 225, 230 (Mo. banc 1977), expressed no difficulty with the proposition that, if sovereign immunity were abrogated, respondeat superior liability would exist:

"The removal of sovereign immunity . . . places responsibility on the state or an agent of the state, county, municipality, or other governmental body under the doctrine of respondeat superior for injuries negligently caused by its agents, servants and employees in the course of employment."

The same logic should extend, to impose respondeat superior liability upon a Sheriff, for the negligence of his deputy. The general principle of respondeat superior holds an employer liable for the torts of his employee committed while engaged in activities within the scope of his or her employment. Ewing-Cage v. Quality Prods., Inc., 18 S.W.3d 147, 150 (Mo. App. 2000). Acts are committed within the scope of employment if the acts are "by virtue of the employment and in furtherance of the business or interest of the employer. An act naturally incident to the employer's business and not arising wholly from some external, independent or personal motive, is done while engaged in the employer's business. Id., at 624.

IV. RESPONDENT DID NOT ERR IN OVERRULING RELATOR RICHARD HILL'S MOTION FOR SUMMARY JUDGMENT, BECAUSE THERE IS SUBSTANTIAL CREDIBLE EVIDENCE FROM WHICH A JURY MIGHT REASONABLY FIND RELATOR, BY HIS ACTIONS SUBSEQUENT TO THE SHOOTING, RATIFIED THE ACTIONS OF DAVID LOE.

Relator's position regarding ratification by Sheriff Hill of his deputy's tort is that the Sheriff, whose sworn legal duty was to enforce state law within his jurisdiction had prior to the shooting conducted no meaningful training of his officers; and immediately following the shooting, left David Loe (the shooter) in charge of the scene for an hour or more; that the Sheriff caused no interviews to be taken of the four county deputies, that instead he gathered them together the morning following the shooting and orchestrated a collaborative defense of their actions, had them together record personal notes of the event in a collaborative and collective setting, did not preserve even those minimal notes (which he knew would be evidence in any legal review which might follow); that unsolicited by any of the officers, he contacted and retained legal counsel to represent the four officers, and obstructed the Missouri State Highway Patrol in its effort to interview the officers by making them unavailable for an appointed interview concerning the shooting, and that he never at any time

caused any sworn statement to be taken from any of the officers concerning what had happened.

The above actions, taken together under the circumstances of this shooting, might reasonably lead a jury to a belief that the Sheriff intended to affirm and ratify the action of his deputy, without necessity of any prior investigation of the facts surrounding the shooting. Ratification of a tortious act or omission, is an acknowledged exception to official immunity. Davis-Bey v. Missouri Department of Corrections, 944 S.W.2d 294 (Mo. App. W.D. 1997).

CONCLUSION

This court should reject common law rules of official immunity outright or qualify it by making the immunity temporary only. Alternatively, the ruling of the trial court is within its sound discretion as a reasonable jury might find that the Sheriff ratified the alleged negligent act or omission of his deputy.

Respectfully submitted,

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Certificate of Compliance and Filing

The undersigned certifies that two (2) complete copies of Respondent's Brief were served on counsel of record M. Douglas Harpool, Attorney for Relator, 1845 S. National, P.O. Box 4288, Springfield, MO 65808, Richard Crites, Richard D. Crites & Associates, 2045 S. Glenstone Avenue, Suite 201, Springfield, MO 65804, and The Honorable George C. Baldrige, Senior Judge, P.O. Box 426, Joplin, MO 64802, by U.S. Mail, postage prepaid, this 5th day of October, 2005.

Further, the undersigned certifies that: (1) Relators' Brief complies with the limitations contained in Special Rule Number 1(b); (2) excluding the cover, certification of service/compliance, signature block and appendix, there are 10,224 words in Respondent's brief; (3) the name and version of the word processing software used to prepare Respondent's Brief is Microsoft Word for Windows; and, (4) the diskette provided to this court has been scanned for viruses and is virus free.

RICHARD L. ANDERSON